REMARKS

The Non Final Office Action mailed October 5, 2006, considered and rejected claims 1-26 and 28. In particular, claims 1, 2, 12, 13, 15, 16, 18 and 21 – 26 were rejected under 35 U.S.C. 102(e) as being anticipated by *Zigmond*. Claim 3 was rejected under 35 U.S.C. 103(a) as being anticipated over *Zigmond* in view of Alexander (US 6,177,931) hereinafter *Alexander*. Claims 4 – 7 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Zigmond* in view of Knusdon (US 2005/0216936) hereinafter *Knudson*. Claims 8 – 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zigmond* in view of Ching et al. (US 2001/0003184) hereinafter *Ching*. Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zigmond* in view of Flickinger et al (US 2005/0210502). Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zigmond* in view of Thomas et al. (US 2005/0251824) herein after *Thomas*. Claims 19 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zigmond* in view of Ohkura et al. (6,347,400) hereinafter *Ohkura*.[1]

By this paper, claims 1-7, 11 and 25 have been amended, such that claims 1-26 and 28 remain pending, of which claims 1 and 25 are the only independent claims at issue.[2]

As reflected in the above listing of claims, Applicant's invention relates to targeting video segments based on remotely issued target instructions and locally stored state and user information. As recited in claim 1, for example, state and user behavior characteristics associated with a video receiver are monitored locally and stored only at the video receiver. The receiver also receives multiple video segments from a stream, and further receives from the stream remotely issued executable instructions that can cause the receiver to select a particular video segment based on the locally stored characteristics. As further recited, the remotely issued executable instructions are further processed by using the locally stored characteristics to cause the video receiver to select the particular video segment, and the selected video segment is

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[1] Although the prior art status of the cited art (other than Zigmond) is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Support for the amendments can be found throughout Applicant's disclosure, including, by way of representation only, the disclosure found in previously presented claim 3, Figure 3, and the corresponding disclosure in the specification. Many of the claim amendments made to the dependent claims have been made to promote consistent use of terminology and to present the claims with more clarity.

caused to be displayed in a window on the display device, simultaneously with the display of primary content that is displayed in a separate window. This primary content is received locally and can be displayed in accordance with a selection made by the viewer of the primary content (claim 3).

Independent claim 25 recites a computer program product that has computer readable media with computer-executable instructions for performing a method generally corresponding to the method of claim 1.

While the inventive methods and systems of Zigmond generally relate to selecting and inserting advertisements into a video programming feed, Applicant submits that Zigmond fails to teach each and every limitation of the pending independent claims and, accordingly, fails to anticipate the pending claims. For instance, Zigmond fails to teach or suggest that the video segment is displayed in one window, simultaneously with the display of primary content in a separate window.

Instead, Zigmond discloses a system that includes a home entertainment device which selects one of multiple advertisements to display to a viewer according to advertisement selection criteria combined with information about the viewer and the system. (Abstract; Col. 6, ll. 5-12). The advertisement selection criteria includes advertisement parameters associated with the particular advertisement as well as advertisement selection rules. (Col. 11, ll. 30-37). The advertisement parameters describe the content of the advertisement or otherwise characterize the advertisement for appropriate display. (Col. 11, ll. 37-42). The advertisement selection rules match the viewer and system information with the advertisement parameters to target desired viewers. (Col. 11, ll. 42-49). Moreover, the advertising selection rules change over time as additional viewer and system information is compiled. (Col. 11, ll. 59-65; Col. 12, ll. 12-14). Upon selecting an advertisement, and at an appropriate time specified in a video programming feed, the home entertainment device inserts the advertisement. (Col. 7, ll. 26-36). To do so, the home entertainment device includes a video switch which toggles between the video programming and a selected advertisement. (Col. 8, ll. 33-36). In this manner, the home entertainment device interrupts the display of the video programming feed and replaces the video feed with the selected advertisement. (Col. 7, ll. 26-29; Col. 15, ll. 57-61).

Accordingly, while Zigmond appears to disclose systems for selecting and displaying an advertisement on a display device, Zigmond fails to disclose wherein a selected particular video

segment is displayed in a window on the display device at the same time primary content is displayed in a separate window on the display device, as claimed in combination with the recited claim elements. In fact, this was generally acknowledged by the Examiner on page 8 of the last Office Action, as follows: Zigmond "fails to explicitly disclose displaying a video segment in said window simultaneously with the primary content." (OA p. 8, ll. 4-5). Accordingly, Zigmond fails to teach or suggest each and every limitation of the pending independent claims. Apparently, for at least this reason, the Examiner relies on a newly cited reference (Alexander).

It will be appreciated, however, that Zigmond cannot be used in an obviousness rejection. In particular, as previously noted in the last response, Zigmond is an improper reference for any rejection based on 35 U.S.C. § 103. In particular, Zigmond should be disqualified as a prior art reference under 35 U.S.C. § 103(c) inasmuch as Zigmond qualifies as prior art, if at all, as a 102(e) reference and inasmuch as Zigmond was, at the time the present invention was made, commonly assigned to, or subject to assignment to, the Assignee of the present application (namely Microsoft Corporation, through WebTV Networks).

Accordingly, inasmuch as Zigmond is relied upon in rejecting all of the claims, and inasmuch as Zigmond fails to anticipate any of the claims and cannot be used in an obviousness rejection of any of the pending claims, Applicant respectfully submits that all of the rejections of record are now moot.

Unfortunately, the disqualification of Zigmond, as a prior art obviousness reference, was not even acknowledged in the last action. Instead, the Examiner produced new obviousness rejections based at least in part on Zigmond. However, each of these new obviousness rejections, as well as the existing obviousness rejections, are improper in view of the disqualification of Zigmond as a prior art obviousness reference under 103(c).

In view of the foregoing, Applicant respectfully submits that each of the individual rejections and assertions made in the last action do not, therefore, need to be addressed individually at this time. In fact, inasmuch as it is not necessary, the merits of the other rejections and the assertions made with regard to the other cited art will not be addressed at this time. [3]

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[3] It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this __15__ day of May, 2007.

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made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.